

CCRB INVESTIGATIVE RECOMMENDATION

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|--|--|--|---|---|---------------------------------|
| Investigator: Igor Volynets | Team: Team # 6 | CCRB Case #: 200803199 | <input checked="" type="checkbox"/> Force | <input checked="" type="checkbox"/> Discourt. | <input type="checkbox"/> U.S. |
| | | | <input checked="" type="checkbox"/> Abuse | <input type="checkbox"/> O.L. | <input type="checkbox"/> Injury |
| Incident Date(s) Saturday, 08/04/2007 2:00 AM | Location of Incident: McDonough Street near Stuyvesant Avenue | Precinct: 81 | 18 Mo. SOL 2/4/2009 | EO SOL 2/4/2009 | |
| Date/Time CV Reported Sat, 03/01/2008 6:23 PM | CV Reported At: CCRB | How CV Reported: Call Processing System | Date/Time Received at CCRB Sat, 03/01/2008 6:23 PM | | |

| Complainant/Victim | Type | Home Address |
|--------------------|------|--------------|
| | | |
| | | |

| Subject Officer(s) | Shield | TaxID | Command |
|-------------------------|--------|--------|---------|
| 1. POM Daniel Nicoletti | 27835 | 942271 | BN IRT |
| 2. An officer | | | |
| 3. SGT Douglas Biegler | 00150 | 905787 | BN IRT |
| 4. POM Matthew Zucker | 29221 | 942840 | BN IRT |
| 5. POM Vincent Realmuto | 03014 | 940617 | BN IRT |
| 6. Officers | | | |

| Officer(s) | Allegation | Investigator Recommendation |
|------------------------|---|-----------------------------|
| A.POM Daniel Nicoletti | Discourtesy: PO Daniel Nicoletti spoke rudely to § 87(2)(b) | |
| B.SGT Douglas Biegler | Abuse: Sgt. Douglas Biegler threatened to damage § 87(2)(b)'s property. | |
| C.SGT Douglas Biegler | Abuse: Sgt. Douglas Biegler damaged § 87(2)(b)'s property. | |
| D. An officer | Discourtesy: An officer spoke rudely to § 87(2)(b) | |
| E.SGT Douglas Biegler | Discourtesy: Sgt. Douglas Biegler spoke rudely to § 87(2)(b) and § 87(2)(b) | |
| F.POM Matthew Zucker | Force: PO Matthew Zucker used physical force against § 87(2)(b) | |
| G.POM Daniel Nicoletti | Force: PO Daniel Nicoletti used physical force against § 87(2)(b) | |
| H.POM Vincent Realmuto | Force: PO Vincent Realmuto used physical force against § 87(2)(b) | |
| I. Officers | Force: Officers used physical force against § 87(2)(b) | |

Synopsis

On August 4, 2007 at about 2:00 AM, in the vicinity of McDonough Street and Stuyvesant Avenue in Brooklyn, § 87(2)(b) was sitting in the driver's seat of his vehicle and his friend § 87(2)(b) was sitting in the passenger seat when PO Daniel Nicoletti and PO Matthew Zucker approached the vehicle. At the time, § 87(2)(b) was drinking alcohol from a Styrofoam cup and there was a bottle of vodka in the car's rear seat. PO Nicoletti asked § 87(2)(b) to roll his window down and get out of the car. § 87(2)(b) refused to do this. § 87(2)(b) told PO Nicoletti that he was drinking cranberry juice and PO Nicoletti allegedly said, "Do you think I am fucking stupid? I can smell the alcohol from here." When § 87(2)(b) asked why he needed to open the door, PO Nicoletti allegedly responded, "Because I fucking told you" (Allegation A). PO Nicoletti called for backup and Sgt. Douglas Biegler arrived on the scene with PO Vincent Realmuto. Sgt. Biegler approached § 87(2)(b) and threatened to "take the fucking window" (Allegation B). Sgt. Biegler then took out a small hammer and smashed the driver's side window (Allegation C). When § 87(2)(b) asked why he was being placed under arrest, an officer who he did not remember told him that he was being arrested for "being fucking stupid" (Allegation D). Sgt. Biegler told § 87(2)(b) and § 87(2)(b) "You put us through all this for this shit? You could have just opened the door. (Allegation E). PO Nicoletti, PO Zucker, PO Realmuto, and several other officers then grabbed § 87(2)(b) took him out of the car, threw him on the ground (Allegations F, G, H, and I). § 87(2)(b) was arrested for resisting arrest, possession of marijuana in the fifth degree, and having alcohol in a vehicle.

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b). This case was originally assigned to Investigator Benjamin Roth. It was reassigned to Investigator Igor Volynets for further investigation and closure after Investigator Roth's promotion.

Summary of Complaint

§ 87(2)(b) CCRB Statement (Encl. 9a-f)

§ 87(2)(b) § 87(2)(b) contacted the CCRB via the Call Processing System. He was interviewed at the CCRB on March 11, 2008. On the date of the incident, § 87(2)(b) was wearing blue jeans and sneakers with nothing on his head. He could not recall what type of shirt he was wearing. § 87(2)(b) stated that the reason he took so long to file his complaint was because his lawyer discouraged him from doing so until his criminal case concluded. His interview statement is consistent with his initial intake narrative (7a-b).

At approximately 12:00 AM, on August 4, 2007, he and his friend, identified as § 87(2)(b) were sitting in § 87(2)(b)'s car which was legally parked on the north side of McDonough Street between Stuyvesant Avenue and Malcolm X Boulevard in Brooklyn. § 87(2)(b) drives a black 1998 Chevy Tahoe with rear tinted windows and large lettering on the windshield and rear windows. § 87(2)(b) stated that the car was registered in his name. § 87(2)(b) stated that the vehicle was turned off and the keys were not in the ignition. § 87(2)(b) had been at the location for approximately half an hour and he acknowledged that they were there to drink. There was a bottle of vodka in a bag in the back seat and two white Styrofoam cups in

cup-holders in the front of the vehicle. § 87(2)(b) had poured a drink but § 87(2)(b) had not yet done so. § 87(2)(b) observed two officers walking down McDonough Street towards Stuyvesant Avenue on the opposite sidewalk. The officers passed § 87(2)(b)'s vehicle, but after observing that there were people sitting in it, they backtracked and approached the vehicle. PO1 (white male, 6'0", 180 pounds with light hair in his 20s, identified through the investigation as PO Nicoletti) approached § 87(2)(b)'s window and asked what they were doing. § 87(2)(b) stated that the window was opened a crack at that time. PO2 (white male, 5'11", 300 pounds with black hair in his 30s, identified through the investigation as PO Mathew Zucker) approached the passenger side. PO Nicoletti asked what was in the cups and § 87(2)(b) responded that it was cranberry juice. PO Nicoletti responded, "Do you think I am fucking stupid? I can smell the alcohol from here." § 87(2)(b) asked why PO Nicoletti was talking like that and PO Nicoletti responded that it was because § 87(2)(b) thought he was stupid. § 87(2)(b) stated that if there was a problem he would provide his ID to PO Nicoletti through the window. PO Nicoletti stated that he wanted § 87(2)(b) to open the door and § 87(2)(b) responded that unless he was under arrest, he was not going to open the door. PO Nicoletti stated that § 87(2)(b) needed to open the door, "Because I fucking told you to open the door." PO Nicoletti then stated that unless § 87(2)(b) opened the door, he was going to call for backup and make a big problem. He never indicated to § 87(2)(b) that he was under arrest, and § 87(2)(b) noted that he was fairly calm throughout the incident other than challenging the officers' use of profanity.

§ 87(2)(b) continued to refuse to open the door and PO Nicoletti called for additional units. PO3 (a white male, 5'9, 150 pounds with red hair in his 30s or 40s, identified as a Sgt. Douglas Biegler) responded to the location and asked § 87(2)(b) what the problem was. § 87(2)(b) explained the situation and Sgt. Biegler responded that § 87(2)(b) was under arrest for resisting arrest. § 87(2)(b) asked how he could be under arrest and resisting when he did not know what he was being arrested for. Sgt. Biegler stated that he did not have all night to go back and forth with § 87(2)(b) and if he did not open the door he would "take the fucking window." Sgt. Biegler then told § 87(2)(b) that they were going to take the window, and § 87(2)(b) stated that he wanted to call a family member to tell them what was going on and to come pick up his truck. § 87(2)(b) called his god-brother and § 87(2)(b) was on the phone with § 87(2)(b)'s god-sister. Sgt. Biegler told § 87(2)(b) that it was alright for him to make this call, but while § 87(2)(b) was on the phone, Sgt. Biegler hit the driver's side window of the car with some type of mallet two to three times, causing it to shatter. The glass shards from the window were covering § 87(2)(b) and he stated that some got in his mouth too. § 87(2)(b) also sustained minor scratches on his forearms as a result of the glass. The door of the car was then opened and § 87(2)(b) stated that he was not resisting and was compliant with the officers by putting his hands up. When he asked why he was being arrested, an officer whom § 87(2)(b) was unable to identify responded that he was being arrested "for being fucking stupid." § 87(2)(b) was placed in handcuffs and placed inside an RMP. § 87(2)(b) was unable to describe any of the additional officers on scene, though he noted that they were all in uniform. While § 87(2)(b) was in the RMP, Sgt. Biegler approached him and stated "you put us through all this for this shit? You could have just opened the door." § 87(2)(b) did not see what happened to § 87(2)(b) on the passenger side of the vehicle.

When § 87(2)(b) arrived at the 81st Precinct, he explained that he was covered in glass and stated that he wanted to go to the hospital. Sgt. Biegler stated "you want to go to the hospital? If you want to play like that, I should give you a breathalyzer." § 87(2)(b) stated that PO Nicoletti and PO Zucker stated that if he went to the hospital, his processing was going to take longer, however a short time later, EMS did respond to the precinct. § 87(2)(b) was unaware of who had called them. The EMT stated that if § 87(2)(b) wanted to go to the hospital, he had to be allowed to because he had minor scratches on his forearms as a result of the glass. § 87(2)(b) was then transported to § 87(2)(b) Hospital, where he was treated for the scratches. When he returned to the precinct, officers were "tearing his truck apart." Officers were removing all the items from inside the truck, including electrical equipment. § 87(2)(b) stated that while the officers were doing this, they ripped several wires in the car and under the hood. § 87(2)(b) provided pictures of the damage to his vehicle. § 87(2)(b) stated that the officers vouchered all of the items in the car, and then turned the car over to his mother. § 87(2)(b) noted that the officers caused over \$1000 worth of damage to his vehicle. This allegation of property damage has been referred to IAB for investigation (CCRB # 200808848).

Results of Investigation

§ 87(2)(b) CCRB Statement (Encl. 10a-c)

§ 87(2)(b) was interviewed at the § 87(2)(b) on April 11, 2008. § 87(2)(b)'s statement is consistent with § 87(2)(b)'s with the following exceptions:

§ 87(2)(b) and § 87(2)(b) were not drinking and had not had anything to drink that evening. When they approached, they immediately instructed § 87(2)(b) and § 87(2)(b) to step out of the vehicle. PO1 (White male, 6'4"-6'5", identified as PO Nicoletti) stated, "We are not going to go through this, just step out of the vehicle." § 87(2)(b) did not allege that PO Nicoletti used any profanity at this point.

After approximately ten to fifteen minutes, Sgt. Biegler arrived at the location with seven or eight additional officers. Sgt. Biegler approached § 87(2)(b)'s vehicle and reiterated that § 87(2)(b) needed to step out of the vehicle. Sgt. Biegler said he was told that § 87(2)(b) had liquor in his vehicle. Sgt. Biegler stated, "I'm not going through this shit, get the fuck out of the vehicle. I don't have all night and you are going to make it hard or easy for yourself. Step out of the fucking vehicle or we are going to make it fucking hard on you fucking guys." § 87(2)(b) stated that there was liquor in the car, but that it was not visible and they had not begun to drink. § 87(2)(b) did not allege that Sgt. Biegler said that he would "take the fucking window" at any point.

Officers opened § 87(2)(b)'s door, grabbed him, and threw him on the ground. § 87(2)(b) identified the officers who grabbed him as PO Zucker, PO4 (Hispanic male, 6'0", with a medium build and curly hair, identified as PO Vincent Realmuto) and two additional white male officers whom § 87(2)(b) was unable to describe. Once § 87(2)(b) was thrown to the ground, he was handcuffed, placed inside an RMP, and transported to the precinct. § 87(2)(b) stated that officers allegedly found marijuana in the dashboard of the vehicle. He stated that he had marijuana at his sock, which was discovered during the search. However, § 87(2)(b) stated that there was no marijuana in the vehicle.

Officer Statements

PO Daniel Nicoletti UF 61 (Encl. 11a-b)

PO Nicoletti's complaint report states that at the time and place of occurrence, he observed § 87(2)(b) with an open bottle of Svedka Vodka (1.75 L.) in a vehicle. § 87(2)(b) refused to lower the window or open the door, which resulted in Sgt. Biegler breaking the driver's window. A search incidental to a lawful arrest revealed one bag of marijuana in plain view of the vehicle.

PO Daniel Nicoletti OLBS (Encl. 12a-b)

According to PO Nicoletti's arrest paperwork, at the time and place of occurrence, he observed § 87(2)(b) with an open bottle of Svedka Vodka (1.75 L.) in a vehicle. § 87(2)(b) refused to lower the window or open the door, which resulted in Sgt. Biegler breaking the driver's window. A search incidental to a lawful arrest revealed one bag of marijuana in plain view of the vehicle. A warrant check additionally revealed that § 87(2)(b) has an open active warrant (Docket # § 87(2)(b)).

PO Daniel Nicoletti Memo Book (Encl. 14a-d)

On August 4, 2008 at 2 AM, PO Nicoletti stopped two males opposite of 402 McDonough Street. At 2:34 AM, two males were placed under arrest and were transported to the 81st Precinct. At 2:55 AM, PO Nicoletti resumed patrol.

PO Daniel Nicoletti CCRB Statement (Encl. 15a-b)

PO Daniel Nicoletti (§ 87(2)(b) Caucasian male, 6'2", 200 lbs., brown hair and blue eyes) was interviewed at the CCRB on May 9, 2008. On August 4, 2007, PO Nicoletti was working the hours of 1930-0400. He was assigned to precinct foot post #7. He was dressed in uniform.

On August 4, 2008 at about 2:00 AM, PO Nicoletti walking on his foot post when he observed two males, § 87(2)(b) and § 87(2)(b) drinking out of plastic cups in a vehicle (1998 Chevy Tahoe with NYS plate # § 87(2)(b) color not recalled) with a bottle of vodka visible at the center console. The car was

turned on with the key in the ignition. PO Nicoletti approached the driver's side vehicle, knocked on the window, and asked § 87(2)(b) to roll the window down. § 87(2)(b) heard PO Nicoletti and refused, saying, "Absolutely not. You have no reason to stop me. I'm not doing anything wrong." PO Nicoletti told him, "You were drinking alcohol. § 87(2)(b) responded, "I was in my car." PO Nicoletti continued to ask § 87(2)(b) to roll the window down and open the door countless times but the civilian refused to cooperate. The car door was locked. PO Nicoletti also observed § 87(2)(b) rolling a blunt of marijuana at the passenger seat. § 87(2)(b) discarded the blunt under his seat and placed the vodka bottle at the back of the car.

PO Nicoletti called Sgt. Biegler to the scene after § 87(2)(b) continually refused to open the door. Sgt. Biegler pleaded with § 87(2)(b) asking him multiple times to roll the window down. PO Zucker, who was at the adjoining foot post, also came to the scene. Several other officers also arrived but PO Nicoletti could not recall who they were. Sgt. Biegler subsequently took out an instrument slightly larger than the size of a pen, stuck in middle of the glass once with it, and broke the window. Sgt. Biegler removed § 87(2)(b) from the vehicle and handcuffed him. § 87(2)(b) came out on his own and did not offer any resistance while being cuffed. PO Nicoletti did not recall Sgt. Biegler threatening to break the window down before actually doing so. Sgt. Biegler sustained a small cut on his hand from the shards of glass. § 87(2)(b) did not complain of any pain at this point.

§ 87(2)(b) threw the joint outside. A bag of marijuana was also in plain view at the center console. PO Nicoletti pulled § 87(2)(b) out of the vehicle. He did not recall exactly where he grabbed § 87(2)(b). He did not remember which officers were next to him. PO Nicoletti placed § 87(2)(b) on the ground to handcuff him. He did not push or shove § 87(2)(b). § 87(2)(b) did not provide any resistance and did not complain of any pain or injury.

PO Realmuto, Sgt. Biegler's operator, ran a warrant check and found an open warrant in § 87(2)(b)'s record.

At holding cells in the stationhouse, § 87(2)(b) told PO Nicoletti that he had glass in his eyes. He subsequently received medical attention for this injury. § 87(2)(b) did not ask for any medical assistance prior to his arrival at the precinct.

PO Nicoletti denied telling § 87(2)(b) "Are you fucking stupid? I can smell the alcohol from here." He did not use any discourteous language with § 87(2)(b) or § 87(2)(b). None of the other officers used any profanity with any of the civilians.

PO Nicoletti performed an inventory search of the vehicle after § 87(2)(b) and § 87(2)(b) were arrested and vouchered all the contents in § 87(2)(b)'s vehicle (Encl. 13a-j). He was not instructed to perform the search by a supervisor. Sgt. Biegler removed a battery from the engine of the car. PO Nicoletti did not damage any items in the car. He did not see any other officers damage any contents in the vehicle.

Sgt. Douglas Biegler Memo Book (Encl. 18a-b)

At 1:50 AM on August 4, 2007, Sgt. Biegler arrived near 422 McDonough Street. At 2:20 AM, Sgt. Biegler took the door to the vehicle and two individuals were placed under arrest after the defendant refused to open the window, come out of the vehicle, or provide identification. Sgt. Biegler broke the window to the vehicle.

Sgt. Douglas Biegler CCRB Statement (Encl. 19a-c)

Sgt. Douglas Biegler (§ 87(2)(b)-old Caucasian male, 6'0", 220 lbs., with brown hair and blue eyes) was interviewed at the CCRB on May 29, 2008. On August 4, 2007, Sgt. Biegler was working from 7:13 PM on August 3, 2007 to 4:10 AM on August 4, 2007 as a patrol supervisor. He was working with PO Realmuto, who was his operator. He was dressed in uniform and was in RMP # 2214. Sgt. Biegler's statement is consistent with PO Nicoletti's with the following exceptions or additional information.

Sgt. Biegler observed PO Nicoletti trying to get the driver out of the vehicle and saw PO Zucker talking to the passenger. PO Zucker and PO Nicoletti told Sgt. Biegler that they saw a bottle of alcohol inside and

also saw the males make some furtive movements in an attempt to hide some other objects in the vehicle (Sgt. Biegler did not see this.) Sgt. Biegler saw a bottle of alcohol in the back seat. He did not remember if it was opened. He did not remember seeing any other containers in the interior of the vehicle. Sgt. Biegler went over to the driver's side and asked the driver, § 87(2)(b) to roll down the window and come out of the vehicle. Sgt. Biegler did not recall if anyone was smoking inside the vehicle. PO Realmuto remained in the RMP and ran a check for the civilians' license plate. § 87(2)(b) was very uncooperative. Sgt. Biegler also instructed § 87(2)(b) to turn the ignition off because he was afraid that § 87(2)(b) could injure or kill someone if he decided to abruptly drive off. § 87(2)(b) turned it off and turned it back on several seconds later. § 87(2)(b) was speaking to someone on his cell phone. § 87(2)(b) was very irate and was saying that he had some right to do as he pleased in the vehicle as if it were his home. Sgt. Biegler told him that he does not live in the vehicle and it is not his home.

Sgt. Biegler explained that § 87(2)(b) needed to come out of the vehicle or he would be forcibly removed. Sgt. Biegler denied telling § 87(2)(b) that he would "take his fucking window" because it is not like him to use any profane language. Twenty minutes or more had elapsed and Sgt. Biegler decided that it was too much of a risk to wait any longer. Sgt. Biegler instructed § 87(2)(b) that he was going to take the driver's side window and warned § 87(2)(b) to turn away. § 87(2)(b) refused to turn away.

Sgt. Biegler broke the window by striking it once with a small device the size of a pen or a mallet. Sgt. Biegler cut one of his fingers from the shattered glass. None of the other officers sustained any injuries. § 87(2)(b) remained seated in the car and refused to come out. Sgt. Biegler and another officer removed § 87(2)(b). Sgt. Biegler might have grabbed either § 87(2)(b)'s arm or leg to get him to step out. Sgt. Biegler did not remember if § 87(2)(b) resisted being cuffed. § 87(2)(b) who sat in the passenger seat, came out on his own and was handcuffed. Sgt. Biegler did not recall which officers cuffed § 87(2)(b). Sgt. Biegler did not make any physical contact with § 87(2)(b). Sgt. Biegler did not recall if § 87(2)(b) was pushed or shoved to the ground at any point. Sgt. Biegler stated that he did not recall if he told § 87(2)(b) and § 87(2)(b) "Why did you put us through all this shit? You could have just opened the door" and again stated that use of such discourteous language doesn't sound like him. Sgt. Biegler did not hear any officers use any discourteous or profane language on the scene at any point during the incident.

PO Matthew Zucker Memo Book (Encl. 16a-b)

At 2 AM on August 4, 2008, two males were stopped across 402 McDonough Street in a black Chevy Tahoe. At 2:15 AM, the perpetrators did not open the window and did not give identification. PO Zucker called the sergeant and observed an open bottle of vodka in the backseat. When the officers went up to the car, the perpetrators hid the bottle. At 2:34 AM, Sgt. Biegler broke the window to remove the perpetrators. PO Zucker arrested two individuals with PO Nicoletti. At 2:55 AM, PO Zucker assisted PO Nicoletti with the arrests.

PO Matthew Zucker CCRB Statement (Encl. 17a-c)

PO Matthew Zucker (§ 87(2)(b)-old Caucasian male, 6'2", 350 lbs., with brown hair and brown eyes) was interviewed at the CCRB on May 22, 2008. PO Zucker started his tour at 7:30 PM on August 3, 2008 and worked until 4:05 AM on August 4, 2008. He was assigned to a foot post and was working with PO Nicoletti. He was dressed in uniform. PO Zucker's statement is consistent with PO Nicoletti's with the following exceptions or additional information:

PO Zucker saw a bottle of vodka on the middle of the rear seat. PO Zucker additionally observed two cups at the front seats. PO Zucker stated that he saw either § 87(2)(b) or § 87(2)(b) drinking from the cups. PO Nicoletti asked § 87(2)(b) the driver for this information a total of at least twenty times. § 87(2)(b) slightly rolled his window down, turned to look at PO Nicoletti, and verbally refused each time, saying that the officer could not ask for his ID because this was harassment. § 87(2)(b) displayed an agitated demeanor and a loud tone of voice. PO Nicoletti told § 87(2)(b) that he could not have an open container in public with the key in the ignition. PO Zucker asked § 87(2)(b) the passenger, for this information. § 87(2)(b) did not give a verbal response and simply shook his head without complying.

§ 87(2)(b) continued to cooperate with Sgt. Biegler, who arrived several minutes later. Sgt. Biegler pulled out an orange life hammer from his RMP, approached the driver's side window and gave § 87(2)(b) an

additional opportunity to open the window or the door. § 87(2)(b) again refused. § 87(2)(b) was talking on his cell phone and told the officers that he was calling IAB because they were harassing him and had no reason to stop him. Sgt. Biegler said, "I'm going to break the window." PO Zucker did not hear Sgt. Biegler say, "I'm going to take the fucking window" at any point. Sgt. Biegler hit the center of the window once with the hammer, shattering the glass. PO Zucker placed his hand on § 87(2)(b)'s left arm and § 87(2)(b) willingly came out of the vehicle. § 87(2)(b) voluntarily opened the passenger door and was placed under arrest. PO Zucker was not standing on the passenger side and did not have any physical contact with § 87(2)(b). PO Nicoletti told PO Zucker that § 87(2)(b) threw a marijuana joint away as he was coming out of the car. PO Nicoletti and the other officers successfully recovered the marijuana. PO Zucker did not hear any officers make any discourteous comments to either § 87(2)(b) or § 87(2)(b).

PO Vincent Realmuto Memo Book (Encl. 20a-c)

At about 2:05 AM, PO Realmuto arrived an assigned post in front of 462 McDonough Street in Brooklyn. At 2:34 AM, one individual was under arrest at the location. At 2:45 AM, PO Realmuto arrived in the 81st Precinct stationhouse.

PO Vincent Realmuto CCRB Statement (Encl. 21a-b)

PO Vincent Realmuto (§ 87(2)(b)-old Caucasian male, 6'1", 213 lbs., with brown hair and brown eyes) was interviewed at the CCRB on June 13, 2008. PO Realmuto was working the hours of 7:30 PM on August 3, 2007 to 4:05 AM on August 4, 2007. He was dressed in uniform and was working as Sgt. Biegler's operator. They were using an RMP. PO Realmuto's statement is consistent with that of the other officers except with the following exceptions or additional information:

Sgt. Biegler came out of the RMP and attempted to talk to § 87(2)(b) for about fifteen to thirty minutes, and tried to get him to exit the car. § 87(2)(b) continued to refuse to open the door and Sgt. Biegler broke the bottom corner of the driver's side window with a life hammer, a six-inch hammer with two metal points on each end. PO Realmuto had come out of the RMP at this time to assist with the arrest. § 87(2)(b) appeared to be upset and frustrated. PO Realmuto did not remember if § 87(2)(b) was cursing or moving his arms around inside the vehicle. § 87(2)(b) was pulled out of the driver's seat because he refused to come out on his own. PO Realmuto did not remember which officers actually pulled § 87(2)(b) out. § 87(2)(b) came out willingly and was not shoved or pushed on the ground at any point. PO Realmuto saw a bottle of liquor in the backseat of the civilian's car after § 87(2)(b) and § 87(2)(b) were removed. PO Realmuto did not hear any officers use any profanity with either § 87(2)(b) or § 87(2)(b) on the scene.

Medical Records (Encl. 22a-p)

According to the records obtained from § 87(2)(b) § 87(2)(b) is a § 87(2)(b)-old male brought by NYPD due to pain to arm with pieces of glass all over his body." No visible injury was noted. § 87(2)(b) was discharged on the afternoon of § 87(2)(b). § 87(2)(b)'s chief complaint on the triage form is listed as "arm pain and glass on body." § 87(2)(b)'s narrative in his intake sheet is listed as the following: "§ 87(2)(b) old in PD custody states that he has glass all over him from when the PD broke window of car. Several minor scratches noted to both forearms without bleeding."

Police Documents

According to the Sprint report for this incident, at 2:30 AM a radio call went out to a 81st Precinct sergeant asking to respond to the location. Sector F resumed patrol on 2:35 AM. At 2:38 AM, EMS was requested to respond to the 81st Precinct stationhouse for minor cuts to the perpetrator. A patrol supervisor unit (#3) arrived at 2:42 AM and made an arrest. A sector F unit resumed patrol at 2:42 AM. An EMS unit arrived in the precinct at 3:30 AM and transported the perpetrator to § 87(2)(b) Hospital (Encl. 23a-d).

Subject Officer CCRB History (Encl. 1a-4a)

PO Nicoletti, Sgt. Biegler, PO Zucker, and PO Realmuto have never been disciplined as a result of a CCRB complaint during their tenures of one year, fourteen years, one year, and two years, respectively.

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

Conclusions and Recommendations

Officer Identification

§ 87(2)(b) identified PO Nicoletti and Sgt. Biegler as the officers who cursed at him and threatened to break his window, respectively. PO Nicoletti and Sgt. Biegler confirmed their involvement in the incident and PO Nicoletti further offered that he made physical contact with § 87(2)(b). For this reason, Allegations A and G are being pleaded against PO Nicoletti and Allegations B, C and D are being pleaded against Sgt. Biegler. § 87(2)(b) identified PO Zucker as one of the officers who pushed him and Allegation F is being pleaded against him. PO Realmuto admitted to being on the scene and his pedigree information matches the description provided by § 87(2)(b) of the tall officer who pushed him outside the car. As such, PO Realmuto is listed as the subject officer for Allegation H. § 87(2)(b) stated that he did not remember the additional officer who spoke rudely with them during the incident. As such, Allegation E is being pleaded against “an officer” from an unknown command. Because § 87(2)(b) could not provide the pedigree information for the two additional officers who grabbed and pushed him, Allegation I is being pleaded against “officers” from an unknown command.

Undisputed Facts

It is undisputed that PO Nicoletti, PO Zucker, and Sgt. Biegler all repeatedly asked § 87(2)(b) to roll his window down and step out of his vehicle. It is undisputed that § 87(2)(b) refused to do this. It is undisputed that Sgt. Biegler took out his life hammer and smashed the driver’s side window with it after § 87(2)(b) refused to get out.

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

Allegations Not Pleaded

Because PO Nicoletti testified that § 87(2)(b)'s ignition was turned on and PO Nicoletti and PO Zucker both stated that they observed a bottle of alcohol in plain view when they approached the car, a separate vehicle stop allegation is not being pleaded in this investigation. Because EMS was called to the precinct and transported § 87(2)(b) to § 87(2)(b) Hospital, a refusal to provide medical treatment is also not being pleaded. Because PO Nicoletti performed an inventory search of § 87(2)(b)'s vehicle in the precinct after alcohol and marijuana were observed in plain view, this search is pursuant to proper arrest custodial procedure and is also not being pleaded as a separate allegation.

Allegation A: PO Daniel Nicoletti spoke rudely to § 87(2)(b)

Allegation B: Sgt. Douglas Biegler threatened to damage § 87(2)(b)'s property.

Allegation D: An officer spoke rudely to § 87(2)(b)

Allegation E: Sgt. Douglas Biegler spoke rudely to § 87(2)(b) and § 87(2)(b)

§ 87(2)(b), § 87(2)(g)

Because § 87(2)(b) stated that he did not remember which officer told him that he was arrested for "being fucking stupid," § 87(2)(b), § 87(2)(g)

Allegation C: Sgt. Douglas Biegler damaged § 87(2)(b)'s property.

§ 87(2)(b) and § 87(2)(b) admitted that § 87(2)(b) refused to open the driver's door and exit the vehicle, even after repeated requests by PO Nicoletti and Sgt. Biegler. All the officers interviewed consistently described § 87(2)(b) and § 87(2)(b) as highly uncooperative individuals. Sgt. Biegler stated that he pleaded with § 87(2)(b) to roll his window down and open the door for at least twenty minutes before deciding to break the window with his life hammer. According to all the officers, Sgt. Biegler hit the window with the hammer one time, causing it to break. § 87(2)(b)'s refusal to roll down the window or open the door is not disputed by any parties, § 87(2)(g)

§ 87(2)(g)

Allegation F: PO Matthew Zucker used physical force against § 87(2)(b)

Allegation G: PO Daniel Nicoletti used physical force against § 87(2)(b)

Allegation H: PO Vincent Realmuto used physical force against § 87(2)(b)

Allegation I: Officers used physical force against § 87(2)(b)

§ 87(2)(b) testified that multiple officers, including PO Zucker, PO Nicoletti, and PO Realmuto, grabbed him, took him out of the car, and threw him on the ground. While PO Nicoletti admitted to placing § 87(2)(b) on the ground, he stated that he did not use any excessive force because § 87(2)(b) was not resisting being placed in cuffs. PO Zucker and PO Realmuto, on the other hand, testified that § 87(2)(b) came out of the car willingly and that he was not grabbed or pushed at any point. § 87(2)(b), § 87(2)(g)

Investigator:

Date:

Supervisor:

Date:

Reviewed by:

Date:

Reviewed by:

Date: